



June 20, 2012

To: City of Fort Collins Planning and Zoning Board

From: Save The Poudre: Poudre Waterkeeper

RE: Request to deny modification to the development proposal for “Pateros Creek Project” (912 Wood Street)

Introduction: Save The Poudre: Poudre Waterkeeper (STP) is a regional non-profit organization whose mission is to protect and restore the Cache la Poudre River of Northern Colorado. Save The Poudre engages in many issues surrounding the Poudre River, including dams and reservoirs, streamflows, water quality, floodplains, and proposed buildings and developments near the Poudre River’s sensitive ecological corridor. The “Pateros Creek Project” (Project) at 912 Wood Street proposes to build a high-density single-family housing cluster near and within the Poudre River buffer zone. The project asks for a precedent-setting modification to the land use code that would negatively impact the Poudre River’s sensitive ecological corridor by increasing the number of homes (and therefore the density of homes) on the property by 17.1% which is far beyond what is allowed in the Urban Estates Zoning District.

We believe Save The Poudre: Poudre Waterkeeper is a key stakeholder in this project and that our positions with regard to the precedent-setting proposed modification should have significant merit to the City of Fort Collins Planning and Zoning Board.

As such, Save The Poudre: Poudre Waterkeeper respectfully requests that the proposed precedent-setting Modification of Standard to Section 4.2(E)(2)(c) be denied because:

1. The Cache la Poudre River deserves “special consideration” and is already severely impacted and under assault.
2. The project’s proposed modification will negatively impact the sensitive Cache la Poudre River ecological corridor.
3. The project’s proposed modification will increase pressure and negative impacts on the Natural Habitat Buffer Zone and undermine the efficacy of the Buffer Zone.
4. The project’s proposed modification is detrimental to the public good, is not equal to or better than a comparable plan with less units, and is not nominal and inconsequential.
5. The developer’s justification for the modification has no merit.
6. The project’s proposed modification violates several City Plan and Principles and Policies.
7. The proposed modification violates Section 4.2(E)(2)(e)(1) of the land use code.

1. The Cache la Poudre River deserves “special consideration” and is already severely impacted and under assault due to:

- a. Proposed dams and diversions – The Poudre has more proposed dam and reservoir projects on it than any comparable river in the U.S.
- b. Streamflows -- All of these dam and reservoir projects propose to take even more water out of the river, when nearly 60% of the water is already diverted by the time the river reaches the proposed Project’s property. Sometimes the Poudre is drained completely dry.¹
- c. Water Quality – the Poudre River violates several State and Federal water quality standards including for copper, acidity, water temperatures, e coli, selenium, cadmium, and lead.²
- d. Floodplains – The Poudre River’s floodplains have already been severely negatively impacted resulting in significantly diminished ecological benefits.
- e. Development – multiple new development projects are proposed along the Poudre River in Fort Collins that, cumulatively, will further deplete the Poudre River’s sensitive ecological corridor.

Due to the above current and proposed negative impacts to the Cache la Poudre River, we are extremely concerned about every additional cumulative impact. In fact, this modification would be precedent setting for the density of housing development proposed near the Poudre River – this is the first project in many years that proposes such a dramatic change modification this close to the Poudre River. Further, the Poudre River deserves “special consideration” as noted in City Plan Policies and Principles 23.1, “Poudre River Overlay District,” which states:

“The intent is to highlight the Corridor as an area needing special consideration due to its great importance to the community.”

(<http://www.fcgov.com/planfortcollins/pdf/cityplan.pdf>, page 42)

We therefore request that the City hold fast and firm to the environmental protection standards set forth in the land use code, give the Poudre River “special consideration due to its great importance to the community,” and therefore deny this proposed precedent-setting modification to the project.

2. The project’s proposed modification will negatively impact the sensitive Cache la Poudre River ecological corridor. The proposed precedent-setting modification will add 17.1% more houses, violating the density standard in Section 4.2(E)(2)(c), and thus will increase the traffic, noise, people, pets, and related negative impacts exactly beside the Poudre River and into the Poudre River’s natural habitat buffer zone and natural areas on a 24/7 basis (these are housing units; the people will live there, not just be recreating visitors). (The calculation: $((41-35)/35)*100 = 17.1\%$) By adding more housing units as proposed in the modification, the developer is amplifying these negative impacts beyond what the land use code allows. Further, by making this development interlaced with the natural areas along the river, the developer is

¹ <http://summitcountyvoice.com/2012/06/09/colorado-drought-watch-poudre-river-goes-dry/>

² <http://savethepoudre.org/news-articles/poudre-rivers-water-quality-is-dropping-collegian-2010-10-25.pdf>

encouraging more impacts to occur – the depictions of the project in the developer’s presentation portray trails and landscaping that encourages residents to leave the property and venture out into the natural areas along the Poudre.

The Ecological Characterization Study for the project (010611_WoodStreetECSR-2.pdf, page 16) states:

“(k) Re-development of the Wood Street parcel and removal of some existing disturbances would create few additional impacts to the Cache la Poudre River corridor beyond those that currently exist with existing development and disturbance.”

We strongly disagree with this statement and believe that the ECS, which is required by Section 3.4.1(E), is completely inadequate. In fact, the property is currently mostly undeveloped except for a few mobile homes and tenants. Also, currently and formerly, the property had a 6-foot chain link fence around it that significantly impeded the movement of people, pets, and negative impacts.

Further, the developer has provided no analyses about the project’s impacts on neighboring natural areas and the sensitive Poudre River corridor. In this situation, the burden of proof is on the developer to substantiate his statement with data – he provides no data. This error of omission by the developer stands in stark contrast to a body of scientific literature about the negative impacts of housing growth near protected areas.^{3,4} Adding more houses and associated impacts from this modification will create even larger negative impacts on the Poudre River and its nearby natural areas.

Because the proposed precedent-setting modification to the project will negatively impact the Poudre River’s sensitive ecological corridor, we request that the City Planning and Zoning Board deny the modification

3. The project’s proposed modification will increase pressure and negative impacts on the Natural Habitat Buffer Zone and undermine the efficacy of the Buffer Zone. Section 3.4.1(E) requires the establishment of buffer zones whose purpose is to: “...protect the ecological character of the natural habitat or natural feature from the impacts of the ongoing activity associated with the development.” By increasing the number of housing units and density on the property, the buffer zone will be increasingly compromised and will fail to protect the ecological character of the natural habitat or nature feature. Because the proposed precedent-setting modification will increasingly compromise the buffer zone, and thus violate the intent of Section 2.4.1(E), we request that the City Planning and Zoning Board deny the modification.

4. The project’s proposed modification is detrimental to the public good, is not equal to or better than a comparable plan with less units, and is not nominal and inconsequential.

³ <http://www.pnas.org/content/107/2/940.full> “Housing growth in and near United States protected areas limits their conservation value”

⁴ <http://www.hcn.org/issues/43.18/development-near-national-parks-impacts-park-ecology>

Section 2.8.2(H) provides the options under which the decision-maker (in this case, the City Planning and Zoning Board) may grant a modification. First, the modification must not be detrimental to the public good. We believe that by adding more negative impacts to the sensitive ecological corridor of the Cache la Poudre River and its surrounding natural areas, the project is detrimental to the public good.

Second, the modification must create a project that is equal to or better than a comparable plan. The modification does not create a project that is equal to or better than a comparable plan with less units. Specifically, the developer provided one example of a comparable plan ("Wood St P and Z packet.pdf, page 4) that is not an actual comparable plan. The comparable plan shown on page 4 simply spreads 35 houses out in the same amount of property as does the proposed project with the modification. Stated differently, the developer's comparable plan (which is also cited by the City in its support of the modification) is a "straw man proposal,"⁵ a ploy to make the project with the modification look better. An actual comparable plan with 35 houses would cluster the properties even more, move the houses farther away from the river and the buffer zone, and thus have less negative impacts on the Cache la Poudre River and surrounding natural areas as described in (2) above. Further, a far better plan would be to place even less than the maximum number of units on the property (35) – the less units, the less negative impacts on the sensitive ecological corridor of the Cache la Poudre River.

Third, the modification is not nominal and inconsequential. Dictionary.com defines "nominal" as: "being such in name only" and "minimal." The modification increases the number of units on the property by 17.1% which we believe is a "significant" increase. If the City increases the number homes, cars, traffic, noise, lights, pets, etc. in this project by 17.1%, it correlates to a "significant" increase in negative impacts. Comparably, there is no measurement involved with City government services where an increase of anything by 17.1% is seen as "nominal and inconsequential." Taxes, traffic, noise, people, roads, garbage – pick any City government service you like, and if it increases by 17.1%, it would never be considered nominal and inconsequential. If sales tax revenue increased by 17.1%, the City would be jumping with joy at the substantial increase. If crime increases by 17.1%, it's very significant. Etc.

Because the proposed precedent-setting modification is detrimental to the public good, is not equal to or better than a comparable plan, and is not nominal and inconsequential, we request that the City Planning and Zoning Board deny the modification.

5. The developer's justification for the modification has no merit. At the public meeting on June 12, 2012, when Save The Poudre representative, Gary Wockner, asked the developer why he needed a modification to increase the number of houses on the property, the developer said that he and the HOA would make more money with more houses and then he and the HOA could use that money to better protect nature at the property. Stated differently, the developer stated that by destroying more nature and by covering it with homes and increasing the negative ecological impacts, he can better protect nature. This justification has no merit. If

⁵ http://en.wikipedia.org/wiki/Straw_man_proposal

the developer really wanted to better protect nature, he would comply with the land use code and not ask for a precedent-setting modification to the housing density standard, or he would in fact put less than 35 units on the property. Any increase in housing density will cause a corresponding increase in traffic, noise, people, pets, and related impacts exactly beside the Poudre River and into the Poudre River's natural habitat buffer zone and natural areas on a 24/7 basis (as described in (2) above).

Because the developer's justification for the precedent-setting modification has no merit, we request that the City Planning and Zoning Board deny the modification.

6. The project's proposed modification violates several City Plan Principles and Policies

(<http://www.fcgov.com/planfortcollins/pdf/cityplan.pdf>) including:

- a. **Policy ENV 1.1 – Protect and Enhance Natural Features.** The modification violates this policy because it allows the project to add more negative impacts to the Poudre River ecology and encroaches into the buffer zone.
- b. **Policy ENV 1.2 – Regulate Development along Waterways.** The modification violates this policy because it makes the project encroach into the natural area (inside the buffer) along the Poudre River.
- c. **Policy ENV 4.2 – Enhance and Restore Streams.** The modification violates this policy because the City is not working with the developer to explore ways to acquire lands to enhance streams.
- d. **Policy ENV 23.1 – Poudre River Corridor Overlay.** The modification violates this policy because it allows the project to add more negative impacts to the Poudre River ecology and encroaches into the buffer zone thereby not giving the Poudre River the "special consideration" it needs.
- e. **Policy ENV 24.1 – Support Ecological Resilience.** The modification violates this policy because it allows the project to add more negative impacts to the Poudre River ecology and encroaches into the buffer zone thereby reducing the resilience of the river ecosystem and negatively impacting natural processes.
- f. **Policy ENV 24.2 – Conserve Natural Features.** The modification violates this policy because it allows the project to add more negative impacts to the Poudre River ecology and encroaches into the buffer zone thereby not conserving and protecting important natural areas and natural values in the Poudre River Corridor.
- g. **Policy ENV 24.3 – Provide Natural Area Protection Buffers.** The modification violates this policy because it allows the project to encroach into the Natural Area Protection Buffer.
- h. **Policy ENV 24.4 – Restore and Enhance.** The modification violates this policy because it allows the project to cover a degraded area with six more houses than the land use code allows.
- i. **Policy ENV 25.1 – Minimize Impacts.** The modification violates this policy because it allows the project to not minimize impacts – minimizing the number of houses in the project would equal compliance; increasing the number of houses and housing density decreases compliance.

- j. **Policy ENV 26.3- Ensure Setbacks for Channel Instability and Improve Channel Migration.** The modification violates this policy because it allows the project to encroach into the buffer zone and within inches of the floodplain thereby potentially leading to channel instability and further channelization.
- k. **Policy ENV 26.4 – Development in the Floodplain.** The modification violates this policy because it allows the project to encroach within inches of the floodplain thereby potentially threatening public safety.
- l. **Policy ENV 27.4 – Restore and Enhance.** The modification violates this policy because it allows the project to add more negative impacts to the Poudre River ecology and encroach into the buffer zone.

Because the proposed precedent-setting modification violates at least ten City Plan Principles and Policies, we request that the City Planning and Zoning Board deny the modification.

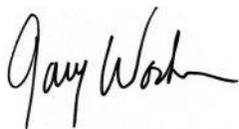
7. The proposed modification violates Section 4.2(E)(2)(e)(1) of the land use code, which states:

“(e) The design of the cluster development shall be appropriate for the site, as demonstrated by compliance with all of the following criteria:

1. preservation of significant natural resources, natural areas and features, native vegetation, open lands or agricultural property through maintenance of large, contiguous blocks of land and other techniques;”

The modification uses more natural areas and features and open lands than would otherwise be needed with a comparable plan that did not need a precedent-setting modification to housing density standards. Such a comparable plan could cluster homes tighter, farther from the river, and would better preserve contiguous blocks of open land. Because the proposed precedent-setting modification violates Section 4.2(E)(2)(e)(1), we request that the City Planning and Zoning Board deny the modification.

Thank you very much for considering our request to deny the precedent-setting modification proposed for this project.



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